UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS - BOSTON

IN THE MATTER OF:	Case #15-11362
DAMIAN ANKETELL	Boston, Massachusetts
	February 25, 2016
Debtor.	2:02:01 P.M.
TIM SMITH, *et al.*, Plaintiffs,	
v.	AP #15-01124
DAMIAN ANKETELL, Defendant.	
DAMIAN ANKETELL, Plaintiff,	
v.	AP #15-01117
TIM SMITH, *et al.*, Defendants.	

TRANSCRIPT OF TRIAL (AFTERNOON SESSION) RE:
(15-01124:) [#41] MOTION FILED BY DEFENDANT DAMIAN ANKETELL FOR SUMMARY JUDGMENT WITH CERTIFICATE OF SERVICE (REGAN, JOHN); [#42] BRIEF/MEMORANDUM OF LAW IN SUPPORT (RE: 41 MOTION FOR

<---------------continued-------------------->

Electronic Sound Recording Operator: Elizabeth Lombard

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SUMMARY JUDGMENT FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
[#43] STATEMENT IN SUPPORT WITH CERTIFICATE OF SERVICE (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
[#44] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT 1, #2 EXHIBIT 2, #3 EXHIBIT 3, #4 EXHIBIT 4, #5 EXHIBIT 5, #6 EXHIBIT 6, #7 EXHIBIT 7, #8 EXHIBIT 8, #9 EXHIBIT 9) (REGAN, JOHN);
[#51] MEMORANDUM OF LAW AND FACT IN OPPOSITION TO (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH;
[#52] EXHIBIT (RE: 51 MEMORANDUM OF LAW AND FACT IN OPPOSITION TO 41 MOTION FOR SUMMARY JUDGMENT) FILED BY PLAINTIFFS THERESA DIPIRO, TIMOTHY SMITH;
[#57] AFFIDAVIT OF JOHN REGAN IN SUPPORT (RE: 41 MOTION FOR SUMMARY JUDGMENT) FILED BY DEFENDANT DAMIAN ANKETELL (ATTACHMENTS: #1 EXHIBIT A, #2 EXHIBIT B) (REGAN, JOHN);
TRIAL DAY 1: [#1] VERIFIED COMPLAINT BY TIMOTHY SMITH, THERESA DIPIRO AGAINST DAMIAN ANKETELL;
NATURE OF SUIT (62 (DISCHARGEABILITY - 523(a)(2), FALSE PRETENSES, FALSE REPRESENTATION, ACTUAL FRAUD)), (68 (DISCHARGEABILITY - 523(a)(6), WILLFUL AND MALICIOUS INJURY)), (14 (RECOVERY OF MONEY/PROPERTY - OTHER))
DIPIRO, THERESA AND SMITH, TIMOTHY
PRO-SE PLAINTIFFS (REGAN, JOHN, COUNSEL FOR DEFENDANT);
[#58] JOINT PRE-TRIAL STATEMENT WITH CERTIFICATE OF SERVICE FILED BY DEFENDANT DAMIAN ANKETELL (REGAN, JOHN);
(15-01117:) TRIAL DAY 1: [#1] COMPLAINT BY DAMIAN ANKETELL AGAINST TIMOTHY SMITH, THERESA DIPIRO; NATURE OF SUIT (91 (DECLARATORY JUDGMENT), (02 (OTHER (e.g., OTHER ACTIONS

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<u>Electronic Sound Recording Operator</u>: Elizabeth Lombard

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THAT WOULD HAVE BEEN BROUGHT IN STATE COURT IF UNRELATED TO BANKRUPTCY)) (REGAN, JOHN, COUNSEL FOR PLAINTIFF, DIPIRO, THERESA AND SMITH, TIMOTHY, PRO-SE DEFENDANTS) BEFORE THE HONORABLE JUDGE FRANK J. BAILEY, J.U.S.B.C.

APPEARANCES:

For Debtor/Plaintiff/ Defendant Damian Anketell:	JOHN J. REGAN, ESQ. Dolan and Regan 10 Chestnut Street Peabody, Massachusetts 01960
For Plaintiff/Defendant Tim Smith:	TIM SMITH, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950
For Plaintiff/Defendant Theresa DiPiro:	THERESA DiPIRO, *Pro Se* 53 Marlboro Street Newburyport, Massachusetts 01950

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I N D E X

WITNESSES	**DIRECT**	**CROSS**	**REDIRECT**	**RECROSS**
Plaintiffs' Witnesses:				
THERESA DIPIRO				
By the Court	9, 67			
By Mr. Regan		48, 69		
TIMOTHY SMITH				
By the Court	73			

EXHIBITS		**Ident.**	**Evid.**
Plaintiff's Exhibits:			
L	Photographs	28	49

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(At 2:02:01 p.m.)

THE CLERK: -- now in session.

THE COURT: Be seated.

MR. REGAN: Your Honor, I'm going to defer cross-examining Mr. Anketell and I'll just take him on his case in chief when the defendant begins his case.

THE COURT: Okay. That's fine. All right. So there's no redirect, but you'll have a chance to cross Mr. Anketell when you hear his direct, okay?

MS. DIPIRO: Thank you.

THE COURT: All right. So you want to -- one of you is going to ask questions and the other is going to --

MS. DIPIRO: Is that how you want to --

THE COURT: Oh, I'm sorry. I didn't say that. I'll let you -- as I said, you can just testify. You can tell me what you want to tell me, okay?

MR. SMITH: Do we do it from our seats, Your Honor, or should we --

THE COURT: No, you need to come up here --

MR. SMITH: Okay.

THE COURT: -- in the witness stand. Now, are you bringing a paper with you?

MS. DIPIRO: Yes, because I -- the reason why is there was some points that we were making with the questions and --

THE COURT: No, no. I just asked a question.

MS. DIPIRO: Yes, I --

THE COURT: You're bringing paper with you to help yourself --

MS. DIPIRO: Yes.

THE COURT: -- testify? Okay.

MS. DIPIRO: Could I use an exhibit if need be?

THE COURT: Of course you can. Absolutely you can, but Mr. Regan can see whatever it is -- if you're reading off something --

MS. DIPIRO: Yes.

THE COURT: -- he gets to see it. Okay. So --

MS. DIPIRO: Just my questions -- just the questions on it because I don't want him to have all of this. I just --

MS. DIPIRO: If you bring it up there --

MS. DIPIRO: Okay.

THE COURT: -- and you're testifying from it --

MS. DIPIRO: Yeah.

THE COURT: -- he gets to see it.

MS. DIPIRO: Sure.

THE COURT: Okay. Whatever it is.

MS. DIPIRO: Can I just give him the section that I'm reading? There's like five pages. I'm probably only reading --

THE COURT: Well, if you're -- whatever you bring up there --

MS. DIPIRO: I have to show him the whole thing, so I should rip it out.

THE COURT: Well, I don't know what you're going to use, so that's --

MR. SMITH: (Indiscernible)

MS. DIPIRO: Okay. That -- got it. Sorry. I got it.

THE COURT: All right.

(Pause)

Well, you -- do you have a separate copy of that? You don't, right? All right.

Mary, is the copier working back there? This one? All right. Don't worry about it. No, that's all right. Maybe he's okay.

You can see it again.

MR. REGAN: I'm content, Your Honor. She may go ahead.

THE COURT: All right. If you want to see it again later, you can see it again.

MR. REGAN: Thank you, Your Honor.

THE COURT: Okay. Come right on up to this chair and Mary will administer the oath.

THE CLERK: Please raise your right hand.

THERESA DIPIRO, SWORN

THE WITNESS: I'm just going to state my name. It's Theresa DiPiro and I am *pro se* plaintiff in this adversary proceeding. As far as my occupation, I'm a mom. I work full time as a real estate agent and I have three young girls and I'm married to my husband Tim.

One statement Mr. Anketell made to me prior to signing the contract is that he did background checks on all his employees. He also made that same statement in March nearing the end of the project when he said those -- when he said the project was moving along faster than expected and it's going to be finished in eight to ten weeks.

EXAMINATION

BY THE COURT:

Q. When did he say it the first time?

A. It was before we signed the contract.

Q. Okay.

A. None of the employees that I approached, which was Chris LeBlanc or subcontractors that I approached, Paul Lance, mentioned that they ever had their background checked by Ground Up or Mr. Anketell, nor were they asked in -- I guess I would say, nor was Chris LeBlanc asked to check any of his subs' background.

MR. REGAN: I'd move to strike as hearsay.

THE COURT: I'll allow that motion to strike. That's -- when you're talking about something that somebody said, they're not a party. Said it outside the courtroom --

THE WITNESS: Yes.

THE COURT: -- and they -- and you're offering it to prove that that's what they said --

THE WITNESS: Yes.

THE COURT: -- that's hearsay. No exceptions, so it's -- I will strike from where you said you spoke to employees and none said that they had done this or something. Okay.

THE WITNESS: If I say I was told, would that be --

THE COURT: That's not -- that's not --

THE WITNESS: Okay. Okay. Then I'll move on.

THE COURT: -- going to help.

THE WITNESS: Thank you.

I already presented Exhibit E, which the email that stated that what Damian Anketell said "I will need to know who you want to use so I can do some background on them." My understanding of that email was that he would do background checks on them. He also stated -- Mr. Anketell stated that safety was important to him.

Mr. Anketell's statement about safety and background checks swayed my decision to use him as a contractor. The reason why was because I have three young girls and there's going to be multiple people in my house and he is one -- that is one of the reasons why we signed a contract with him and gave him our first deposit.

During the week of around 3/23 when Paul Lance was doing the framing of our home, we -- both my husband and I were very pleased with the progress. He's an excellent framer. And that is when Mr. Anketell stated that he thought the project was going to be -- to last eight weeks rather than ten, which to me made me very excited.

At that time -- I'd like to introduce an exhibit. I now know that there were no funds in which Mr. Anketell could have possibly proceeded with the contract. Yet, I continued to pay him funds. I would like to refer to the funds that I paid him after his statement that he's going to be done in eight to ten weeks, if you may.

BY THE COURT:

Q. All right. What exhibit do you want to talk about?

A. That would be Exhibit G.

Q. All right. Hold on. I need to -- okay.

A. So I -- Exhibit G.

Q. All right. Well, that's -- that's the --

A. It's not an exhibit. It's --

Q. It's a chalk.

A. It's a chalk. I'm looking at the chalk. If you'd like, I could show you the bank statement where I -- where the $11,130 hit his construction account for proof, but it is there and that is --

Q. I'm sorry, what did you say?
A. I have the -- I think we admitted the bank statement for Ground Up Construction so you can see where the $11,000 that I paid him came into the account, if that's necessary.
Q. All right. All right.
A. I'd be happy to do that.
Q. Well, what are you showing on --
A. I'm just showing --
Q. Well, hold on. What are you showing here on Exhibit G?
A. I'm --
Q. Are those -- those are amounts that you say you paid him?
A. Yes.
Q. Okay.
A. And he --
Q. Well, go ahead and tell me about that.
A. That last payment and probably the one before, particularly the $11,130, was paid to him because he said it was moving along so quickly and that he was doing background checks.
Q. I see. So that's the $11,130?
A. Yeah. Yes.
Q. Okay.
A. That --

Q. Were these amounts required under the contract?

A. No, they weren't. According to the testimony we just heard from Paul Lance and Chris LeBlanc, if you turn to Exhibit A, which is the contract --

Q. Yes.

A. -- at that point when I paid the $11,000 the initial deposit of close to $39,000 was given to Ground Up Construction, as well as the full demolition payment of $28,000. And it states on the contract on page 2 of 3 of Exhibit A, "Once the framing and rough construction is complete an additional $28,000 is due." I paid $11,000 of that. Both Chris LeBlanc and Paul Lance testified that framing in rough construction was not complete when they left the job.

Q. Um-hum. Um-hum.

A. And I also wanted to note at that time when I made the payment, which I think the inability to pay -- of Mr. Anketell to pay his workers was not apparent to me. I also wanted to mention that in October right after we made our first payment, which I believe was October 14th when the contract was signed -- actually, when the contract was signed October 13th, we made the payment to Mr. Anketell for the first deposit of $38,000 on October 17th. When Mr. Anketell was not responding to my husband and I for a couple days, we were concerned. We started looking him up online and we started asking questions. We made a -- we got in contact with his then framer. His name was Kenny Lefrenswa. He was introduced to us originally as his framer. We did call him and he stated that --

MR. REGAN: Your Honor, hearsay. Objection.

THE COURT: All right. Hold on.

BY THE COURT:

Q. So you want to tell me what --

A. What he -- well, we --

Q. Hold on, hold on. Not -- don't tell me.

A. Oh, I'm sorry.

Q. I'm just trying to --

A. Okay.

Q. You started to say --

A. Our concerns.

Q. Yeah. All right. And you want to tell me what happened when you called Mr. Lefrenswa. You spoke to him. Is that right?

A. My husband did and I was with him.

Q. Well, when -- all right. So was this on a telephone?

A. On the telephone.

Q. And was it on speaker phone?

A. I don't recall, but I was standing right next to him and saying -- asking questions and --

Q. Well, that may be, but did -- could you ask --

A. I don't believe it was on speaker phone. I think it was on the telephone.

Q. So whatever you know is what your husband told you?
A. Told me. So that would be hearsay?
Q. That's two levels of hearsay.
A. Okay.
Q. Hold on, hold on.
A. Okay.
Q. All right. I think that that's probably -- your husband can try again on that.
A. Okay.
Q. We'll just -- at this stage I'm going to sustain --
A. Okay. I won't say what he said.
Q. I don't -- yeah. I don't -- again, you don't have a lawyer. There are very technical exceptions, many of them, to the hearsay rule. It could be that one of them applies but it isn't my job to read through that list and figure out for you whether any apply, so --
A. That's okay.
Q. All right. I feel better.
A. It's okay because I think he could probably speak to it because he -- okay.
Q. Well, he can do that but it's still probably hearsay.
MR. SMITH: Right. We'll --
THE WITNESS: Maybe do a better job than I did.
THE COURT: Can I -- let me -- I do want to ask you this.

THE WITNESS: Sure.

THE COURT: I am allowed to ask you questions to make your testimony sensible --

THE WITNESS: Yes.

THE COURT: -- to me.

BY THE COURT:

Q. You gave him that first deposit, so to speak, of $38,952 on October 13, right?

A. October 17th.

Q. October 17. And then when you say you tried to reach him, tell me about what you did.

A. Well, I know he made a couple calls to him. The reason why it was a bit alarming was because I was getting calls daily to get the deposit. Like his mother would call me and he would call me. He would email me, he would text me. And once he got the deposit there was very little communication.

Q. I see. Okay. But what did you do?

A. We called --

Q. To contact him?

A. I called him and at one point we emailed him and asked him to stop -- to not buy any materials for the project, that we wanted to talk to him and that we wanted to get some references, and I have that email with me. I think it might have been admitted. I think it's email Exhibit E.

Q. How long did this go on that you couldn't reach him?
A. Oh, probably a couple days -- a couple days.
Q. Oh. When was he supposed to start?
A. Immediately.
Q. Okay. That was your understanding?
A. Yeah. As soon as he can, yeah. They had -- I know they had to get drawings, but we didn't have any conversations about drawings, anything like right after the deposit. And I think my husband had to come to me and he was like, "Have you heard from Damian?" and I was like, "No, I heard -- you know, I heard from him up to when I give the deposit" and we're busy. And so we started to do some research and realized that -- and got very wary as to where our money might have been spent.
Q. All right. Well, you knew you had to get drawings done, right?
A. Yes. Yes. And we were --
Q. So --
A. -- waiting for our next meeting and we didn't hear from him. And I think what --
Q. I'm trying to get a sense of how long all this took?
A. It was probably -- it was a few days, but --
Q. Oh, all right. Okay.
A. But coming into that he probably was calling me every day and then all of a sudden it was like radio silence and we realized, oh, my God, we just gave him $38,000 of our money and

he could be spending it on something else.

MR. REGAN: Objection, Your Honor. Recitation of her fear; motion to strike.

THE COURT: I --

MR. REGAN: Relevance.

THE COURT: Overruled. Okay.

BY THE COURT:

Q. Okay. Tell me what happened next.

A. So we did -- my husband made a call to Kenny.

Q. What happened as a result of the call to Kenny? Don't tell me what he said, but what happened?

A. I know.

Q. Did you do anything as a result of that call?

A. We emailed him and asked him to stop buying materials.

Q. Emailed who?

A. We emailed Damian and asked him to stop buying materials. We'd like to see some references and hold off on moving forward with the project.

Q. And whatever Kenny told you caused you to do that?

A. Yes.

Q. Okay.

A. We also made a call to David Jaquith and, as he testified -- I don't know, you heard his testimony as to what he -- I'm not trying to get objected to -- his testimony as to what they discussed and that was -- you know, we were then told by Damian that he was buying materials and that he paid the architect and that we wouldn't be able to get our deposit back. So that call to the architect, it was in reference to that.

Q. All right.

A. And what I'm trying to get to is, if we were told we were able to get our deposits back and that that money was not spent on materials and the architect we probably wouldn't move forward with the project. I have copies of the checks --

Q. I'm sorry. You said "If we were told ..."?

A. If we were -- if we knew that -- if we were -- weren't told that money was already spent on materials and the architect, we would have pursued -- we would have pursued getting our deposit back and not move forward with --

Q. Okay.

A. I have documents that show that David Jaquith's check was written in November and not October. And I'm not aware of any materials that were purchased in the month of October for the project.

Q. All right. So Mr. Anketell told you that he had spent the $38,000 by buying materials?

A. No. He said he started -- he -- you know, he started the job basically by buying materials and he gave the deposit for the architect.

Q. All right. When did he tell you that?

A. It was the week of 10 -- the 20th. This is in the span of that email that I presented. It was like the 20th to the 23rd.

Q. And do you have any evidence that that wasn't true, that he didn't start buying materials?

A. I could look at his bank statements, use-of-funds statement that he gave me, which is Exhibit --

Q. That's in evidence, isn't it?

A. Yes.

Q. Okay. Well, you can show me anything that's in evidence. That's for sure.

A. I sure can, yes. And I also have the payment to David Jaquith, a copy of that check.

Q. All right. What exhibit do you want to refer me to?

A. I'll go to the check from David Jaquith.

Q. All right. What exhibit is it?

A. That is Exhibit H, which I believe is admitted. If not, I'd like to admit it.

Q. Is it in? It's in.

A. It's in. I thought it was. If you look on page 2 --

Q. Just hold on. I don't happen to have tabs, so I --

A. Oh, I'm sorry.

Q. It takes me a little bit of time.

A. Yeah, we have the tabs. It's H, 1 of 2.

Q. All right. Exhibit --

A. H.
Q. Oh, Exhibit H, 1 of 2. Yeah. All right. I see it. All right. It's $1,000 payment on a check dated 11/16.
A. Yeah, that --
Q. To Mr. Jaquith.
A. Correct.
Q. Okay. All right.
A. And the conversations regarding the architect's payments were back in October.
Q. Okay. And when you say "the conversations" --
A. Regarding him buying materials.
Q. I know what it was, but was that -- is that something you're telling me now or is there something in evidence on that already?
A. The --
Q. Anything else?
A. No, that was just what he told us is that he was buying materials and --
Q. I understand. When did he tell you that?
A. The week of 10/20 --
Q. All right.
A. 20 to 25.
Q. And that was done orally?
A. Orally, yes.
Q. Okay. All right. I understand. Did you tell him

that if he hadn't started buying materials and paying the architect that you would cancel the contract? Did you tell him that?

A. We actually contacted an attorney --

Q. No, but that's not my question.

A. No, we didn't tell him. He didn't tell him that. We didn't come out and say it. We just said, you know --

Q. All right.

A. -- we would like our -- you know, we would like our deposit back and we --

Q. Wait, wait, wait a minute.

A. He hinted to it but we didn't --

Q. Wait, wait, wait. Did you say to him, "We want our deposit back"?

A. I don't know exactly how we put it. I don't think we came out and said it. I think we inferred that we would like to stop working with him, but I don't know if I said --

Q. What did you say --

A. Oh, I --

Q. -- from which -- hold on. What did you say from which you would conclude now that he should have inferred that you wanted the deposit back?

A. We asked him to stop buying the materials and we asked him -- I don't know how we exactly worded it -- is we asked him to -- that we may part ways basically and that --

Q. I don't mean "basically," so this is really important.

A. I don't know how -- okay.

Q. All right. Don't talk when I'm talking, okay?

A. Um-hum.

Q. We'll take turns. All right. Did you tell -- did you use the words "part ways" with him or is that something you're just thinking now?

A. I'm trying to think how we said it.

Q. Okay. And is it a possibility you don't remember? It's all --

A. I don't remember the exact words.

Q. Okay.

A. I don't remember exact words. I don't think we said, "We have our deposit back" but we -- it was in terms that I don't remember. I don't really recall.

Q. Okay. All right. So what else happened? What else do you want to tell me?

A. He also said they had started buying materials and the use-of-funds spreadsheet, which is --

Q. What exhibit number is that letter?

A. Yeah, I'm looking for that here, so -- J.

Q. All right. I have it. 2 of 2 or 1 of 2.

A. If you look under "Materials" there's no materials that were purchased in October.

Q. All right. This document, just remind me. This is something that he and his counsel prepared and gave you, right?

A. Prepared, which was the funds spent on our project.

Q. All right. But they made this document?

A. Yes.

Q. They created it --

A. Yes, they --

Q. -- not you?

A. Correct.

Q. Right? And they made it to give to the trustee?

A. I -- that's what they said.

Q. All right. You don't know.

A. I'm not sure -- yeah.

Q. All right. And you're trying to show me this to show me that --

A. None of the expenses for materials -- there's no materials that show up as being purchased in the month of November and October.

Q. Okay. I hear you.

A. I think that's pretty much it.

Q. That's all you want to tell me today? I'm not saying more. I'm just asking you --

A. No, no. I believe that's it because these are -- I -- it was -- I wasn't expecting to state stuff. I was expecting to ask questions -- being asked questions by my husband. I didn't know how to do this.

Q. Oh. Yeah, you know, he -- I have a problem --

A. This is easier. I actually prefer this.

Q. I have a problem with that only because he's not a lawyer and I don't like -- he would then be in some way representing you and he's not allowed to represent you.

A. Exactly.

Q. You know. That's a problem. So can you tell me what it is they were going to build? What is this project?

A. I'm -- oh, that's a good question. Thank you. They --

Q. I only ask good questions.

A. That's a really good question. They were hired to build -- we have a -- the dormer of our attic and basically what that meant was moving a stairwell that went from my oldest daughter's room --

Q. Um-hum.

A. -- to the main hallway on the second to third floor, which is a pretty major construction. They had put on some Nantucket-style dormers. "They" meaning the new contractors -- or actually the framer framed it. And we added a bath, a bedroom for my daughter and office for myself and a play area for the kids. We did finally complete the project. No one is living up there yet, but it's been a long haul.

Q. All right. So this was basically raising the roof --

A. Raising the roof, yeah.
Q. -- some and adding these rooms?
A. Yeah.
Q. And at the end of the day you hoped to get a playroom, an office, a bedroom and a new bathroom? Four things?
A. And -- yeah, and move the stairs. Yes.
Q. And move the stairs. Okay. All right. I understand. Did you have other people give you any quotes on doing this work?
A. We did, yes.
Q. And what -- why did you hire Mr. Anketell and not somebody else?
A. Well, one reason was because of his experience that he said he had, also because of the -- he said he did two and a half-million dollars in business in the last year. He also said he had a lot of jobs lined up and at the time we -- I guess me and my husband probably differed a little bit. I preferred to wait until the new year to start the project and he wanted to get it done right away, so we started looking for it and he said, "You know what?" He said he could fit us into our sched -- his schedule, but we had to sign the contract soon to fit us in, which happens with contractors.
Q. Um-hum.
A. So we signed the contract and gave him the first

deposit so we could be -- fit in. And ultimately the project didn't start until March of the following year. Some of it was due to snow. Some of it was due to -- took a long time for the architect to do the plans, but our intention when we signed the contract was to start before Christmas and the delays were out of our hands and there wasn't much snow in that -- in the -- before Christmas of that year.

When they did ultimately start the project in March, it was going -- Paul Lance was an excellent framer and I'm very thankful that he was our framer. And he did come back to our job after he wasn't paid and finished what he was supposed to do, at least to keep it somewhat watertight and we just -- we just didn't expect that.

Q. Okay. All right. There's some water there. It's all we can -- judges can do is to get people hydrated, but I don't know what else to tell you. If you want to take a break, I'll do that, too. Do you want to take a minute?

A. Sure.

Q. Shall we take just a minute? Okay. I'm going to step off for a minute and then we'll come back.

(Off the record at 2:33:25 p.m.)

* * * * * * * * *

(On the record at 2:37:25 p.m.)

THE COURT: All right. Be seated.

BY THE COURT:

Q. Okay. Let's proceed then. You're still under oath. And I don't know where we were. Is there anything else you want to tell me in -- by way of your testimony?

(Pause)

A. I just want to summarize. The end of -- towards the end of the project we gave $78,000 in funds to Damian Anketell. He completed it approximately by my calculations, and this is based on my spreadsheet, is $28,000 worth of work. We did receive some money back, which was $17,000 after the end of the construction and very little was done and we were left in a very desperate state as far as our house. And I would like to refer to the pictures of our home at the end of the project, which is Exhibit L. Is everybody there?

Q. Not yet. I'm afraid my book doesn't have --

A. Pictures?

Q. My book goes from --

A. Okay.

Q. My book goes from K to Exhibit -- to the mortgage.

A. Oh.

Q. And that looks like -- it looks like another H to me.

A. Oh.

Q. 1 of 1 and then I have M.

A. Do you want to use Tim's?

Q. No. Hold on. I just want to be sure that it's not just out of place because then they can stay where they are.

A. Sorry about that.
Q. Yeah. I don't have an L in here, so just --
A. Do you want to pass yours --
MR. SMITH: Sure.
THE WITNESS: -- Tim?
THE COURT: Somebody can give it to me.
THE WITNESS: That --
THE COURT: I guess let me -- let me use this one. My law clerk as well. Thank you. All right.

BY THE COURT:

Q. So just so we're clear, 1 of 7, right?
A. Yes.
Q. I've got seven pages of photos.
A. Yes. Some of them are of different -- like some is damaged, some is they're the stairs. I'll just summarize what our home -- the condition of our home. It was -- at the time we left, which was March, it was a cold winter. Our HVAC system was totally disconnected in our attic.
Q. Okay.
A. As my husband stated --
Q. Okay. Let me focus you on something else for a minute then we'll come back to this, all right?
A. Yes. (Crying.)
Q. This is the very first time anybody has ever cried in here, you know that?

A. I've got it.

Q. It's not true. It's not true. It happens almost every day. Usually it's me. Okay. But I'll ask you this. All right. You told me that -- I want to get the numbers down. So you said $78,000. You wrote him checks totaling about $78,000. You got 17 back from PayPal or something or on your credit card.

A. It was our credit. It had nothing to do -- we contacted the credit card company after the termination of the project and they credited us $17,000 of the payments.

Q. Okay.

A. But that was after construction was over.

Q. All right. So that means that you were then out of pocket $61,000, right?

A. Correct.

Q. Okay. And what was the value of the work by your estimate of the work that actually got done?

A. 27 to 28,000. I have it on my spreadsheet. I could look it up exactly if you want me to.

Q. Well, I think it's a good time to tell me.

A. 28.

Q. How did you get to that number?

A. I looked at the use-of-funds spreadsheet that he gave us and I took and I verified the amounts each person got paid. For example, Chris LeBlanc said he got paid $2,000 and Damian had $11,000.

Q. And is that calculation done somewhere in this binder?

A. Yes, it is. It's --

Q. Where is it?

A. It is --

Q. G?

A. It is --

Q. No.

A. A reconciliation, which is AA.

Q. AA.

A. Yep.

Q. All right. Is that in evidence?

A. As a chalk, yes. It's not -- it's a chalk.

Q. Okay. Well, hold on. Let me -- let me get to it. Go by it and then I come back to it. Okay. So AA is two pages.

A. Yeah. So I took basically his figures and put it in an Excel spreadsheet and those are the numbers on the left that tie out to what he said he spent on our project. That's Mr. Anketell.

Q. All right. So these entries, are these just word for word from your -- from his -- the exhibit that's --

A. Use of funds.

Q. -- in evidence, his use-of-funds thing.

A. The left-hand side is, yes, where it says -- it's 7/12 and then it say Damian. That all ties out to the use-of-funds spreadsheet that he provided to us. I call it the use-of-funds spreadsheet.

Q. And the right side --

A. Is questionable is what I question. I dispute that -- those charges.

Q. I see. Okay. All right. But on a higher level then -- so on this document we see -- on the left side we see what he claims on his document were monies that he spent --

A. Yeah.

Q. -- and then you got to 20 -- you come down to $61,000. Is that right? Or $60,000 for 52; is that the number you think he owes you?

A. He came to -- he came to $59,932 and I came to $27,283 because the difference -- I take the disputed amount is $32,651.

Q. Okay. And we're talking about different things here, though, all right. So he thinks he's spent $59,932.

A. Yes.

Q. You think he spent $59,932 less $27,282, right?

A. Less --

Q. No?

A. No. Incorrect. Less the $32,651.

Q. I see.

A. Because that's what I disputed.
Q. Okay.
A. Based on the testimony, some of it. And then I just took the 59 and I took up the disputed amount and that bulk comes to $27,282.
Q. Okay. Now I understand.
A. It's confusing. I apologize.
Q. Yes. Okay.
A. The numbers.
Q. I see what you're saying. So according to his spreadsheet provided to the U.S. Trustee now in evidence, he takes the position that he essentially spent all of the money that you provided to him on your project.
A. Correct. Despite him saying that only $30,000 of the work was really what was done for the contract, which was he said demolition was done in framing, which only accounts for 30,000 so it makes me wonder.
Q. All right. Well, I'm just looking for evidence now, so --
A. Yes.
Q. -- not argument. Okay.
A. So yes. I'm saying it -- he spent approximately $27,000 based on the facts I could find and he's saying he spent $60,000 at the end of the project.
Q. All right. But even you say then that you got a

total value from him of $27,000 plus seven -- 30 -- you got 34,000. Right?

A. Incorrect because he --

Q. I'm sorry.

A. The framing was -- that was $31,680 for the framing, but the framing wasn't complete. I think he owed $7,000 on that. And then the demolition is $2542, so it's 31, 32, 33 -- about $34,000 on his seven, which is about 27 and that's not a coincidence -- I mean, it's a coincidence, but there -- somewhat in my number, but that's what I think he actually said based on all the documents --

Q. I'm just trying to understand your view.

A. My view is that if you go to Exhibit A, page 2 of 3.

Q. Yeah.

A. He -- I believe he's stating that -- and Mr. Anketell is saying that demolition was completed and we're in dispute whether framing in rough construction was completed. And those two on the contract --

Q. No, I don't think you're understanding --

A. Oh, I'm sorry.

Q. -- me. I'm just trying to --

A. Okay.

Q. You -- I'm trying to get it down to gross numbers. You say that you paid him $78,000 and you got back 17, so you gave him 61. So far I'm correct, right? That is your

Theresa DiPiro - By the Court

testimony, correct?
A. Yes. That's aft -- we got the -- just noting we got the $17,000 back after the project.
Q. Don't worry about it.
A. Okay. So about 61. Yes, correct.
Q. That's what you're out of pocket?
A. Yep.
Q. Because you got the 17 back, don't care right now for when it happened, but that's what you got back.
A. Hum.
Q. You got that back, so you're out of pocket 61,000.
A. Correct.
Q. All right. And now I just want a simple answer to this as best you can.
A. Yes.
Q. What's the value of what you got from him? What's your view, not his? Not anyone else's. Your view of what you got from him; what value?
A. In construction --
Q. Well, that's all he did for you, right?
A. Yes.
Q. Okay.
A. It would be $27,282.
Q. All right. We're going to call that 28 grossly, so --

A. 27. 27, 28. That's fine.
Q. So it's $61,000 less 28 is what he owes you?
A. Um-hum.
Q. Am I right? Don't --
A. He owed me -- yeah, the day he left the project -- well, after we got our credits from the credit card company, yes.
Q. Don't confuse it. Okay. So it's 61 minus 28?
A. Yes.
Q. All right. I went to Catholic school so I can't do math, so --
A. And I don't have a calculator, so --
Q. Well, hold on. I can do it. 33,000. Is that right?
A. That's correct.
Q. That's what you say he owes you.
A. Yes. For our -- the construction piece of it, yeah.
Q. What other piece is there?
A. We had to -- we have -- our driveway was damaged. I have a spreadsheet. Actually, I have it written down if I can grab it. I have it. Could probably present it, but --
Q. If you don't tell me about it --
A. Oh.
Q. -- while you're under oath, it's not in --
A. Okay. No, I have it. I just didn't know if I could bring it with --

Q. You're going to have to give it to him.
A. Okay. So -- yeah, so I had that -- he had given --
Q. Hold on, hold on. What do you have in front of you now?
A. Just my calculations of damages.
Q. Got to give it to Mr. Regan if you're going to use it.
A. Okay.
(Pause)
MR. REGAN: Does it carry onto the next page? I've seen it, Your Honor.
THE COURT: All right.

BY THE COURT:

Q. So don't look at anything else on that page -- or on that folder unless you're going to give it to --
A. Okay. Yeah. No problem.
Q. -- Mr. Regan to see. All right. Now you're telling me -- you're testifying to me now about all the damages that you suffered as a result of this relationship, right? Is that what you're doing?
A. Well, if you're talking about construction I netted the difference based on my calculations of $36,000. We gave him 63,504 in deposits. That's net of the credit card refund. And then we -- I estimated he performed $27,282 worth of work so that net is 36, which was this, 36,222.

Q. All right. What else do you say he owes you?
A. We had -- where the dumpster was sitting in our driveway it damaged our driveway and the repair costs we estimated to be $8,000. When they were demo-ing, the screens on the side of the house with the --
Q. Well, wait a minute. $8,000 on the driveway.
A. Yes.
Q. What's your basis for that number?
A. It was an estimate.
Q. Made by whom?
A. I just sort of made an estimate.
Q. All right.
A. I didn't really --
Q. So you and your husband?
A. Me and my husband, yeah.
Q. Okay.
A. Okay.
Q. All right. What else?
A. There were probably about four screens on the side of the house that were ripped. The cost of the screens I estimated to be about $200 each, so that would be --
Q. So it's $800?
A. Yep.
Q. And that's screens. And why is he responsible for screens?

A. Because it was when they were throwing the demo material off the house and the dumpster wasn’t big enough and it was going --
Q. All right.
A. Banging against the house.
Q. Damages and where did you get that number of $200 per window or per screen?
A. Well, we did have some quotes from the windows that we purchased and it was about $200 a window it would take.
Q. Okay. Anything else?
A. We had landscaping. We had just had our yard landscaped. And where the trailer was parked and where they drove up in the driveway was all torn up. Actually, I think Mr. Anketell told us that he would reseed it. And we’d just had to like really dig out the grass and such and we estimated $1500 for that.
Q. And again, you haven’t come with any evidence of that. It’s just your --
A. We estimated, yeah. Ceiling repair, basically when we had no -- no -- I guess not -- no shingles on our roof there was water coming in. It damaged the ceiling in two of my children’s rooms and our master bathroom and that we estimated to be $2,000. So that total came to $12,300.
Q. Okay. Anything else?
A. As far as the budgeting of the two jobs, what we paid

out to our contractor to finish the job versus what the contractor -- the contract cost was, there was a difference of $13,121. We had -- in order to finish -- this is an additional one. In order to finish the project because we had tapped out our equity line of credit and we had to get a roof on our house and such, we had to take cash advances out on our credit card -- actually, two of them, and it cost us four percent to do -- to get the cash.

Q. Okay.

A. Once we pay it off, it’s going to be a 21 percent interest rate, which is frightful. So it’s approximately 40 -- 40,000 -- $40,000 and --

Q. I don’t know what you mean by that.

A. $40,000 times --

Q. Oh.

A. -- that -- basically to get a cash advance we had to get $40,000 in cash and pay it up front four percent interest to get that cash.

Q. I see.

A. So it would be $1600. Actually, I did have it (indiscernible). And then basically we have an equity line of credit which we’ve extended and I’m not quite sure how to calculate this, but when we first put our deposit down with Damian Anketell he said that he would recoup the interest that we had to pay while the deposit sat in his account from October to November. In addition, we had to take out additional money just to keep ourselves whole. I estimated that to be like $2600.

Q. So it's interest lost on your $38,000 deposit and I don't understand the "keep yourself whole" part.

A. Well, the 36 -- basically the funds that he -- that he -- basically that $36,222, I'm assuming that is what we're paying interest on -- we've paid interest on for the last 15 months because it wasn't money -- it would have been money we would have had if we hadn't been in this situation.

Q. But you have the -- you have the development. You have the construction done.

A. We do, but we had to pay 36 -- basically because he left the job and we paid him so much money, $36,000 is now sitting in a -- we couldn't pay our -- that back to our equity line of credit because --

Q. All right. All right. Okay. And the $13,121 that you ended up paying over and above the -- that's over and above the estimate that he gave you to do the project; is that what you're telling me?

A. Yes. The estimated project cost minus what we actually paid out of pocket. So I took what we paid out of contractor -- a new contractor we paid him $97,000 and I added to it the work that actually was performed, which is 27,282, and that came to $124,000. And I --

Q. Did you make any changes to the project?
A. I didn't include the changes. We did a window -- interior window and took that out. We had some spindles replaced on the way up. I didn't include that. So those changes we didn't include. He -- his -- their quote didn't include painting, but --
Q. Whose quote didn't?
A. My -- my contractor said that he wouldn't do painting, but Damian told us that painting was included so I did include that, so that was the difference. It was $13,121.
Q. All right. And so you're telling me that there were no changes in --
A. Not -- I --
Q. You want to be sure about this.
A. I'm trying to think if there's anything. I don't recall any changes. And if there were, I didn't include the bill because I -- I kept -- I have all the bills with me of what we paid.
Q. Okay. All right. I'm not sure where all this is going, but I just wanted to -- this is your chance to tell me, so --
A. Yeah. No, I would have to look. I don't recall anything that I included in this number that was not included in what Damian was supposed to do. I could flip through it again, but I didn't put anything in there that --

Q. All right. All right. Anything else you want to tell me in your testimony? And I want to remind you and your husband that when you testify -- when -- what is said in this courtroom, other than when you're under oath testifying to me, is not evidence. So if you think, well, he's already heard about this statement or that statement because my husband said it during opening or because it was asked about on cross of Mr. Anketell that is not evidence in this case.

A. Okay. Gotcha.

Q. So if you don't tell me now it is not evidence. So whatever you want to tell me --

A. Regarding -- okay.

Q. Do you understand what I'm telling you?

A. Yeah. You want to know what I misrepresent -- the misrepresentations are.

Q. I want to know everything you want to tell me.

A. Yeah.

Q. I'm not going to tell you what to tell me. I just --

A. Yes, I know.

Q. I just want you to understand the difference between when you're sitting at that able and when you're sitting in that box. It's a big difference. Okay. So is there anything else that you want to tell me under oath that supports your allegation that Mr. Anketell should not get a discharge on these amounts? And take your time.

A. I guess I'll recap just in case I didn't -- I missed anything. We got into the contract with Mr. Anketell because we thought he had experience in doing the projects that we're doing like from our project. Also, that he said he had a lot of work ahead of him. We thought he was very busy and that we needed to move quickly in order to get on the schedule. The fact that he -- Mr. Anketell also told us that he does background checks on all of his employees and that was a major factor in us moving forward with him and giving him the initial deposit. He also stated that, like I said, in March when he was saying things were moving along.

I also was willing to give him more funds, which was $11,000 in March towards the end of the project when he told me that things were moving faster than expected. And I -- and I gave him that payment knowingly thinking that the project was going to continue. I also -- I also -- we did consider -- we did consider in talking about, you know, in -- I don't know -- I don't remember the basis of it. I know we -- me and my husband discussed the -- all the details of it. We discussed moving -- you know, not moving forward with the project because of the materials, that he already started purchasing stuff and we thought it would be difficult to get out of it because he started spending the money. And he proceeded based on him telling us that he did spend the money and did -- start -- started spending the money.

Q. Um-hum.
A. And that's pretty much it. I would like to just go over the condition of our property. I think I'm okay to do so.
Q. All right.
A. And leave you with that and I think that's pretty much would cover it.
Q. All right. Go ahead.
A. The exhibit -- it's not what you have -- is L.
Q. Right.
A. And this -- this would speak to how our house was left. We had no heat in our second floor. The second floor of our home is where all of us sleep. The first picture on the left is my daughter wrapped in a sleeping bag. If you flip to the second page, the top right -- I think my husband pointed this out -- is a picture of our fireplace -- or chimney being knocked down on the third floor where we were starting the construction and there is CO being vented into that space. That was left like that.

To the left is a picture of the venting from our washer/dryer and the venting from our second floor bath being cut into the third floor attic. The one on the bottom right-hand corner is just a picture of how it was left. There was no framing done. Pretty much that board that you see with the opening -- you have to turn it landscape -- is how you would get to the second floor. Multiple times we'd have it after the construction stopped we could hear the water on our roofs and we could hear animals running around --

Q. Um-hum.

A. -- because there were a lot of openings. So that's a picture of that. On the --

Q. 3 of 7 we're on now?

A. We're on 3 of 7.

Q. Yeah.

A. The one to the left is a screen that was ripped at -- the one to the bottom left is the dumpster where it lay and the landscape -- part of the landscaping. The trailer was actually parked past the dumpster. You could sort of see it. The one to the top right is the steam pipe that was caught, so basically it was the steam pipe was severed and it was just left there, so every time you flushed the toilet the whole second floor smelled like sewage.

Q. So we don't have to go back over these, are you going to offer these into evidence?

A. I would like to, yes.

Q. All right. So up till now can you tell me of the exhibits -- we've looked through three pages of photographs. Who took these photographs?

A. I took most of them. My husband might have taken a few.

Q. All right. When were they taken?

A. They were taken after the project ended and it was after --

Q. Give me the best you can. Tell me the dates.

A. I would say, April probably 5th.

Q. All right. Are these photographs -- and I'll ask you to affirm this as to the ones you're about to show me.

A. Um-hum.

Q. Are they a fair and accurate representation of what the conditions looked like at the time that -- on April 5th?

A. Yes.

Q. Okay. All right. Go ahead. Tell me what else you want to tell me. And if any of these are different in date or time than you've told me so far --

A. Yep.

Q. -- then please point that out, but go ahead and tell me what you want to tell me about these photographs.

A. So page 3 of 7, that's one of the ripped screens. The one on the bottom is just where the dumpster sat and the trailer sat behind on our landscaping. The one at the bottom is just the tire marks in our landscaping. And like I said, the steam pipe is on the top right, so it was severed and that was basically as you come up the stairs it was right over your head, so we tended to get a lot of smell (phonetic) from that.

Page 4 of 7 is a picture -- on the top left is a picture of my daughter's room and basically the unfinished --

oops -- stairway going in. Sorry about that. Going into the attic. The one to the right is the stairway going from the first floor to the second floor, so it was all rough construction. And that was just a trailer sitting on the grass.

If you flip to page 5 of 7 that's another one of the screens. The top of page 5 on the right is basically how the roof and the windows were left. We did get water into our house. And we were told when he left it that we need to get a roof -- a roof on there as soon as possible as it was -- it would call -- cause water damage. We did get some water. I think that's a duplicate on that bottom right. And that's just a pic -- the one on the bottom left is a picture of the attic with the holes going to the outside so animals could get in.

And if you look at page 6 of 7, the top two are pictures of the attic and the fact that you can see the air through the framing. And then the ones -- two on the bottom are the disconnected HVAC unit that serviced the second floor of our home.

Q. Okay.

A. If you'd switch to page 7 of 7, that's the water damage to our master bath and one of the bedrooms and then there's another screen that was ripped and that's it.

Q. Okay.

A. And that's all I have.

Q. All right. All right. So you're offering these in evidence.

A. Yes.

THE COURT: Any objection? Any objection to the photographs coming in?

MR. REGAN: No objection, Your Honor.

THE COURT: No objection. All right. So they're in --

THE WITNESS: Thank you.

THE COURT: -- as Exhibit L.

Plaintiff's Exhibit L Admitted Into Evidence

Okay. Thank you.

THE WITNESS: Thank you.

THE COURT: Well, don't go anywhere.

THE WITNESS: Oh.

THE COURT: The next part is coming.

THE WITNESS: Oh, I forgot about that.

THE COURT: Remember, he has his turn.

THE WITNESS: Gotcha.

MR. REGAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. REGAN:

Q. Ms. DiPiro, with respect to the question of background checks you recall doing a deposition we discussed this matter, do you? Do you recall we --

A. I don't recall.
Q. You don't recall. Okay. Do you recall your deposition was taken on approximately -- it was taken on January 15th in this action.
A. That was (indiscernible).
Q. And you sat in my office for some time last week reviewing the transcripts and making any changes you saw fit, correct?
A. Yes, I did.
Q. Okay. Now, do you recall that you testified that you asked the question of Mr. Anketell concerning background checks or the discussion came up one way or the other on October 13th, the same day that you signed the contract?
A. I don't recall.
Q. Okay.
A. I don't recall the --
Q. Do you dispute that?
A. Do you say did I say that at deposition? You might have asked me. I don't recall.
Q. All right. Did you encounter any problems with any contractors or employees that were at your house that related to any matters that would have been picked up on a background check? Have any thefts, any assaults, any problems with any of the people who worked on your house?
A. No.

Q. Okay. Referring now to Exhibit A, which is the contract itself, that the -- you agree this is the contract between yourself and your husband and Ground Up Construction, correct?

A. Yes.

Q. Okay. And whose signature appears on page 3 of 3 as you read them?

A. My husband.

Q. Okay. And does Mr. Anketell's signature appear as well?

A. Yes.

Q. Okay. And you had --

THE COURT: Pull that microphone closer.

THE WITNESS: Oh, sorry.

THE COURT: I understand --

THE WITNESS: Is that closer?

THE COURT: Just -- yeah, I want to make sure we -- all right.

THE WITNESS: Okay.

THE COURT: Go ahead.

THE WITNESS: Thank you.

BY MR. REGAN:

Q. As you described, you had been shopping around for contractors for some period of time, correct?

A. Yes.

Q. And you had actually received other estimates for the same job, right?
A. Yes.
Q. And was the estimate that you received from Ground Up higher, lower or the same than the prior estimates you had received?
A. I don't recall. My husband was the one who sort of headed up the estimates, but they were probably within 10 to $20,000.
Q. Do you know if the other estimates were, again, higher or lower than the Ground Up estimate?
A. I don't recall.
Q. Okay. Now, Mr. Anketell provided you this estimate approximately August the 30th of 2014, right -- I'm sorry, the 31st.
A. I don't recall the exact date.
Q. If you look at page 3 of 3 on Exhibit A does that tell you the day that he signed it?
A. I don't know if he signed it that day or when my husband signed it. I don't recall.
Q. Okay. This -- did this come to you signed, the proposal?
A. We never -- no. I don't remember Damian's signature was on it. We never got a signed copy with my husband's signature on it.

Q. My question is, do you recall whether you received this on or about its stated date of August the 31st?

A. I don't recall.

Q. Okay. The stated date of October the 13th where your husband signed is a correct date for his signature, is it not?

A. Correct.

Q. Okay. Now, after you were presented with this proposal you and your husband went to a credit union and obtained an equity loan on your home, did you not?

A. That's incorrect.

Q. Did you obtain an equity loan in the amount of $125,000 on September the 29th of 2014?

A. It was before we signed the contract; not after.

Q. I didn't ask if it was before you signed the contract. I asked if after you received the proposal --

A. I (indiscernible) --

Q. Let me ask the question, please. After you received the proposal and before you signed on October 13th did you obtain a home equity line of credit on your house?

A. I don't remember when we received the proposal, so I can't --

Q. Do you recall if you obtained that loan after the time of receiving the proposal and before the signing on the 13th?

A. I don't recall.

Q. Okay. If I suggest to you that the records in the Registry of Deeds indicate it was September the 29th, 2014? Do you have any reason to dispute that?

A. If that's what the records say, that sounds about right.

Q. And you agree that the amount of that home equity loan was $125,000, correct?

A. That sounds about right.

Q. Pardon?

A. That seems about right.

Q. Okay. Now, you and your husband both -- well, I'll just speak -- just have you speak yourself. You've read the contracts before it was signed. Is that correct?

A. Yes.

Q. Okay. And you understood its provisions, did you not?

A. I don't know that we studied it, but I guess we read through it and --

Q. Did you have a common sense understanding of it?

A. Yes, yes.

Q. All right.

A. We did.

Q. And included in that you understood the payment provisions to which you agree, right?

A. Yes, we did.

Q. Okay. And you made the first payment as you've said, correct?
A. Yes.
Q. Okay. And that occurred on Sep -- on October the 17th by wire transfer, right?
A. Correct.
Q. Okay. By the way, was that a transfer of a portion of the funds in the home equity line of credit or was that from some other resource?
A. I believe it was from the home equity line of credit.
Q. Okay. And by the way, what bank did that go into?
A. What did it go into?
Q. Yeah. From what institution did you wire those funds to Ground Up?
A. It was Tremont Credit Union is where we held it.
Q. Very well. Now, during the time after October the 13th and before February the 4th there were occasions when Mr. Anketell and his employees were at your house to do measurements. Is that true?
A. The architect certainly came and did measurements.
Q. Any other employees on site that you can recall during that period?
A. I believe the HVAC person, which they ultimately weren't going to use, came through and looked at the HVC at some point.

Q. Do you remember Kenny being there?
A. Kenny was there during one of the first meetings. I couldn't tell you the date of it.
Q. Do you remember Nate being there at any time between October 13th and the wintertime?
A. I didn't meet Nate until after I met Chris.
Q. Okay. Do you -- and do you recall at some point Mr. Jacquith, the architect, arrived to look at the house in order to draw up his plans, right?
A. Could you repeat that?
Q. Sure. You recall at sometime he arrived at your house for the purpose of drawing up the plans.
A. He came to my --
Q. Right. And he sat and talked with you about what you wanted for a project, right?
A. Correct.
Q. That is, you --
A. See how --
Q. -- said, here's what we'd like for our design. You said that to Mr. Jaquith, correct?
A. Yes.
Q. Okay. Was your husband with you at that time during that meeting?
A. Yes.
Q. Then you called Mr. Jaquith. You know his testimony

to the effect that the plans were not completed until January for whatever series of circumstances that were on him?

A. Yes.

Q. Okay. And then in February you made a payment in the amount of $14,000 by check, correct?

A. I believe it was a check, yeah.

Q. Okay. Do you remember one way or the other?

A. I probably could look at the bank statement and tell you.

Q. Oh, I'm just asking if you remember --

A. I know I paid him $14,000. I believe it was by check.

Q. Okay. And that was with respect to the provision in the contract that says on the first day of demolition a payment in the amount of $27,823 was due, right?

A. Correct.

Q. Okay. And at that time interior demolition had begun, had it not?

A. It did not.

Q. Pardon me?

A. It did not begin.

Q. It did not. When did the interior demolition begin?

A. In March.

Q. In March. On the 18th?

A. I don't know the exact date, but it was at some point in March.

Q. Well, you heard Mr. LeBlanc say that the interior demolition had all been done in February. Do you recall that portion of his testimony?

A. No, I don't.

Q. Okay. Is it your testimony that there was or was not any demolition done in February or any demolition done prior to March the 18th?

A. I don't know when it was done in March, but I know it was not done in February.

Q. Do you recall debris being in your driveway due to interior demolition during the month of March?

A. Yes.

Q. Okay. Do you remember it there in the month of February?

A. I do not.

Q. Okay. And your testimony is nothing happened on interior demolition prior to the 18th of March, right?

A. I don't know the exact date in March it started, but I know nothing was done in February.

Q. But in any event, you agree that the payment due with respect to demolition was the 27,823, right?

A. Just want to look at the numbers. Correct.

Q. Okay. And then in this by virtue of the agreement that you had entered into with Ground Up, right?

A. Correct.

Q. Okay. At some point did you ever complete the demolition payment?

A. Yes.

Q. When?

A. I'm going to look at my schedule. I'm looking at -- just so you know, I'm referring to Exhibit G at this point to help me.

Q. Let me suggest to you, you've indicated that you made a payment on March the 17th in the amount of $1300, right?

A. March 17th. Yes.

Q. Okay. And that was towards the demolition payment, was it not?

A. Correct.

Q. Okay. So now we have $14,000 plus $1300 has been paid towards the total amount due for demolition, right?

A. Correct.

Q. Okay. And then on the same day you made a second payment in the amount of $6200, right?

A. Correct.

Q. First payment was on credit cards, weren't they?

A. No. The $6200 was on a check from Tremont Credit Union. The $1300 was on a check from Bank of America.

Q. And then on March the 20th you made an additional payment towards what was due on demolition in the amount of

$6232, right?
A. Correct.
Q. What was the form of that payment?
A. Credit card.
Q. What was the credit card, do you recall?
A. It was a FIA credit card that me and my husband held.
Q. Did you -- you originally had made a payment on a debit card for that amount, had you not?
A. I don’t recall.
Q. Okay. And so if I suggest to you that you made a payment on a debit card and then you contacted Mr. Anketell and asked to reverse that and put it on a credit card instead does that help your memory at all?
A. No, I actually don’t remember that at all.
Q. Okay. Now, this -- the payment of $6232 would have brought you to the full amount of the demolition payment due, right?
A. Correct.
Q. Okay. And that occurred on March the 20th. So by this time all the interior demolition had been done, right?
A. I don’t know.
Q. Okay. In any event, this $6,232 is part of what you obtained back when you called your credit card company to seek a refund. Is that true?
A. Correct.

Q. Okay. So on balance you folks never paid the complete demolition payment, did you?

A. That's incorrect.

Q. Well, as you sit here now, after the monies you obtained back there was an initial deposit, initial payment that you need to make in the amount of $38,000 some odd -- I'm sorry -- yeah, in the amount of $38,000 some odd. And then you were $6232 shy of the total amount of the demolition payment. Is that not true? That's what you laid out in money, including what you received back on your refund.

A. I'm -- I lost you.

Q. Well --

A. Back about four questions.

Q. Then we'll go slowly. You paid --

A. Ask them one at a time, please.

Q. Fine. We'll do it. You paid $38,952 four, five days after the signing of the contract, right?

A. Correct.

Q. Okay. Then you paid $14,000, which is a little bit more than half of the demolition amount -- demolition payment amount, correct?

A. Correct.

Q. Okay. Then you paid $1300 and then you paid $6200 and that's still didn't continue all the way up to the total demolition payment amount, did it, being 27 and change?

A. Correct.
Q. Okay. And then you paid $6232 on a credit card, but that came back to you, right?
A. That came back to me after the project was ended, so --
Q. It came back to you, did it not?
A. It did after --
Q. So as you sit here today with the amount that you've expended altogether it's $1300, plus $6200, plus $14,000, plus $38,952, right?
A. Correct.
Q. Okay. And then you also paid $11,130 and that was with respect to the framing payment, was it not?
A. Correct.
Q. Okay. Each one of these payments you made -- by the way, was it you that was actually making the payments or did your husband --
A. I was -- I was in charge of that.
Q. -- did the (indiscernible). So in each one of these cases you either wrote the check, ordered the wire transfer or gave the information with which to make a credit card payment, right?
A. My husband I think did some of the Paypal because I'm not as -- when we paid the credit card payment I think he might have done that on his computer because I couldn't.

Q. Okay. But in any event --

A. It was with that --

Q. Each of these payments required you and your husband -- or your husband, as the case may be, to sit down and write the check and deliver it or to perform the transaction to charge your credit card, right?

A. Correct.

Q. And in each instance you did this because it was appropriate under the contract, is that not right?

A. Incorrect.

Q. Pardon?

A. That's incorrect.

Q. Okay. Now, in March you switched over from making payments from your credit union account or another bank account to trying to put things on the credit card, right?

A. Correct.

Q. Okay. And you had sent an email at some point to Mr. Anketell saying, "Look, we've only got $40,000 cash to do this. We're out of money," right?

A. I don't recall.

Q. You don't recall. Okay. In any event, you did communicate to him that you were out of money and needed to use credit cards, right?

A. I don't recall. I don't --

Q. You don't recall that. Okay. Now, at some point and

I believe you've indicated in your affidavit, in your test -- or in your complaint or your testimony that there's a phone conversation between Mr. Anketell and your husband on or about March the 30th, right?

A. Correct.

Q. Okay. And in that conversation Mr. Anketell was seeking to have you bring your payments correct, right?

A. That's not correct.

Q. That's what my -- well, he's seeking additional payments from you based on what he thought the status of the work was, correct?

A. That's not correct.

Q. It's not correct. Okay. In any event, your husband told him that he was not going to make any more payments because you were out of money with which to make payments, right?

A. That's a leading question.

Q. My question is, is that -- that's the allegation you make in the complaint. And, yes, it's leading so please answer it.

A. Could you repeat the question?

Q. Sure. During that conversation -- and I'll reference paragraph 33 of your verified complaint -- your husband told Mr. Anketell, "We're not making anymore payments. We've run out of money with which to make payments." That's what -- is that a statement that you made in your sworn complaint to the Court?

A. It's a statement that we made, but it wasn't in reference to any contract payment.

Q. Didn't ask that. The question was, did you -- is that a statement that was in your complaint?

A. It wasn't --

Q. "We're not making any more payments. We're out of money. We don't have any more money with which to pay this," right?

A. Correct.

Q. Okay. Now, thereafter on April the 3rd -- oh, by the way, on April the 3rd you had a meeting that Mr. LeBlanc had referred to in his testimony, right? Do you recall that meeting?

A. Correct.

Q. Okay. And in that meeting Mr. Anketell informed you that he was having such financial difficulties that he had to stop working for a time, right?

A. I don't know if he said it in that exact words, but --

Q. In substance did he communicate that to you?

A. That he -- he doesn't -- that he's run out of money basically, yes.

Q. Okay. And you were very distraught and upset at this

circumstance, weren't you?
A. Of course I was.
Q. And you cried and you called him a thief and said he stole your money, right?
A. Yes, I did.
Q. Did -- did you have any conversation with Chris LeBlanc before this meeting occurred?
A. None at all.
Q. Okay. And your husband had to calm you down you were so upset, right?
A. Of course he did.
Q. And in the course of being upset you told him to leave and get off your property, right, and not come back?
A. No, I did not.
Q. You never said that?
A. No, I did not.
Q. Okay. Do you remember your husband saying anything to you during that meeting about a baseball bat?
A. No.
Q. You don't? Okay. Very well. Thank you.
MR. REGAN: I've no further questions.
THE COURT: All right. So this would be your time to consider what you were asked on direct -- on cross-examination and limit it to what you were asked by Mr. Regan, those topics.
THE WITNESS: Yes, yes.

EXAMINATION

BY THE COURT:

Q. Is there anything you'd want to explain to me?

A. Yes.

Q. All right. Go ahead.

A. On that evening of March 30th in our complaint it refers to us, a call that we received from Damian Anketell. On that date all of our payments were made well and beyond the -- what was due per the contract. I actually had paid $11,000 more and the -- we agreed verbally to a 30 percent promissory note and that was signed. So at that point we already paid $11,000 more than we were supposed to pay and we signed a promissory note for 30 percent of the project.

When he called us we were both in bed, so I remember very clearly and my -- he called my husband. And when he got off the phone we talked about -- he's like, "I just got a really strange call" and he said, "He said that he's having some liquidity problems and that he wanted to know if we had any more funds in which to pay him," and we said, "No, we're out of funds. We have no money in which to pay him," and it had nothing to do with contractual payments.

I guess at that point we probably should have thought more strongly about it, but he had assured my husband that his liquidity problem will not affect the continuance of our projects and we believed him. I also wanted to state that when we met with Chris LeBlanc and Damian that meeting was called because Chris LeBlanc called it and told us that we're going to meet on Friday. We probably should have known better, but I had no idea what was coming on March -- on April the 3rd, so we were blindsided by the fact that he could no longer finish our project. So I just wanted to state those --

Q. All right.

A. But that -- I think that call on March 30th was most represent -- maybe misconstrued in the complaint. It wasn't a call for payment of the contract. It was a call for helping Mr. Anketell with his liquidity problems. I will be honest that I had said to Damian that if I could pay at the end of the contract more of that promissory note, I would love to. I'm just the type of person who doesn't like to be in debt because I -- before this all happened, I always paid my credit card bills and had good credit. So I did -- I did probably put it out there that if I -- if I came up with enough funds to pay some of that promissory note when he was done with the project, I would loved to have paid it. That's -- and so maybe he thought -- my guess is that he -- he probably thought maybe we had some more money that we could help him with. In hindsight I'm very glad I did not provide with any more funds.

Q. Okay. All right. Anything else?

A. That would be all.

THE COURT: All right. And anything further?

MR. REGAN: A few, Your Honor, please.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. REGAN:

Q. Ms. DiPiro, you've referenced a promissory note. Early on in your discussions in August of 2014 the question of some financing by Ground Up came up, right?

A. Okay. What was the time frame again? I just want to --

Q. When you first was discussing the deal with Ground Up, August/September period of time prior to the signing of the contract there was discussion of financing, right?

A. It could have been October as well.

Q. All right.

A. I'm not sure, but --

Q. And you folks declined the terms that were offered because you didn't like the ten percent fee, correct?

A. That's not correct.

Q. It's not correct. Okay. But in any event, you didn't take that financing. You went and got you home equity line of credit, right?

A. That's not correct.

Q. That's not correct. You got a home equity line of credit in or about September or October, didn't you?

A. We received the equity line of credit before we discussed any loan with Mr. Anketell.

Q. My question is, you got the home equity line of credit in or about September or October.

A. I was -- you said the date was September 28th, correct?

Q. That's -- I suggested that to you. I think you agreed.

A. It was September.

Q. Now, when do you recall any conversations about financing with Mr. Anketell? If -- do you have any date estimate for that?

A. I know we talked about it the day we signed the contract.

Q. Okay. Do you remember any discussion of it beforehand?

A. I don't remember discussing it beforehand. We probably did.

Q. But in any event, you didn't enter into any financing agreements at that time, did you?

A. No, not at that time.

Q. And then in March you had shifted over from paying -- making payments with cash and you were then making payments with credit cards, right?

A. Yep.

Q. And at that point you and your husband once you began asking Damian, "Can we do the note? Can we do the note? We don't have enough money here with which to pay you," that is essentially what occurred that led to the note, right?

A. That's not correct.

Q. Okay. And in -- by the way, when did you receive the note, if you recall?

A. It's in here. I think it was the 25th.

Q. Okay. When was --

A. And --

Q. -- it returned signed by you to Damian?

A. I signed it right in front of him.

Q. Okay. If I suggest to you that it was emailed on April the 1st does that at all refresh your memory?

A. I believe I signed it in front of him if that -- my memory -- I think we sat at my kitchen table and we signed it.

Q. Um-hum. So my suggestion it occurred a few days later it does or doesn't change your memory at all?

A. I might have emailed him a copy of it.

Q. Okay. Did he walk out of your kitchen with the note or did you keep it after the meeting and then email it to him?

A. I don't recall, but now --

Q. Okay.

A. -- that you said that, that could have happened.

Q. Okay. So --

A. (Indiscernible) --

Q. -- from the 30th -- or I'm going to start from the 25th to whenever you emailed it to him on April the 1st, he didn't have a note in his hand with which to do any business, did he?

A. I can't confirm that we --

Q. Okay. But you don't have a memory one --

A. -- emailed him --

Q. -- way or the other?

A. I don't remember. Yeah, I don't.

Q. By the way, at the time -- as of March the 30th and you've seen the photographs that you've offered into evidence. The roof of the project had been framed and covered with plywood, right?

A. I don't know the exact materials, what it was covered with.

Q. Okay. Well, there was some sheathing over the framing of the roof, right? There were no shingles or finished topping on it.

A. No.

Q. Okay. The walls were up and, again, there was some sort of sheathing covering the framing of the walls, right?

A. Correct. There was some walls in it, too.

Q. Okay. Very well. Thank you. I've no further.

A. You're welcome.

THE COURT: Anything else based on that?

(Pause)

THE WITNESS: I'll just make a statement regarding the promissory note that it was signed I think the last day -- the last -- the same day that I paid in excess of my framing project, so it was -- it was put into writing by his initiation and I don't recall whether he left it and I emailed it back.

THE COURT: All right.

THE WITNESS: I couldn't -- so that's about it.

THE COURT: All right. Thank you.

THE WITNESS: Okay. Thank you, Your Honor.

THE COURT: All right. All right. Okay. So you can go back to counsel table.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: And we can get the preliminaries started --

MR. SMITH: Sure.

THE COURT: -- with your testimony. Ooh. It's all right. It happens every day.

(Extended pause.)

Okay. Mary's going to administer the oath.

THE CLERK: Raise your right hand.

TIMOTHY SMITH, SWORN

THE COURT: All right. So you saw how it went. I'll probably have questions, but why don't you --

THE WITNESS: Right.

EXAMINATION

BY THE COURT:

Q. Why don't you go ahead and tell me what you want to tell me?

A. Sure. I think we'll just -- I'll touch most of the things that Theresa said and maybe expand on that. So just to give some color on why we chose Damian --

Q. First of all, who are you?

A. I'm Tim Smith. I'm Theresa's husband.

Q. All right. And what do you do for a living?

A. I am unemployed at this moment.

Q. Well, when you're employed what do you do?

A. Investment management.

Q. I see.

A. Advisor.

Q. Financial services.

A. Financial services.

Q. I see. Okay. Okay. All right. Go ahead.

A. Thank you. So we went with Mr. Anketell along with a bunch of I'd say six to eight other -- I'd say six other contractors, had them throughout the house over a period of probably three or four months. I think we planned to do this about a year prior and we met with some of the people, gotten I think some quotes and whatnot, and I think Mr. Anketell was maybe the third or fourth to come in.

Q. Um-hum.

A. And he appeared competent. He brought up points that other contractors had brought up. And you know, that resonated a bit with me. And I said, "Well, you -- you know, you made these points" and still I -- you know, we had some confidence there.

Now, there were some timing issues. There was someone who I think had a first choice we wanted to use and ironically they're finishing our project now or finished it, but there was some timing issues, so we went with Mr. Anketell as kind of a second choice, but we felt competent -- confident in his abilities. And one of the reasons I can say that I was confident -- I should say that we reached -- done more due diligence than we thought we did. I was working 12-hour days. It was very busy at the time. But one representation I remember very clearly was at our dining room table and Mr. Anketell had specified that he had done two-and-a half-million dollars of business the prior year. And I was thinking, wow, that's pretty extraordinary. In thinking back if I'd done the math that would have been 20 projects like ours and there was no indication of employees and staff to that level. But I was impressed. I said, "Done two point -- that's impressive." I said, "Well, you know" -- and he explained how much he was growing and whatnot and we had a brief discussion about how -- that's a quick way to kill a business is growing too fast, et cetera, et cetera. And he said, well, he was looking to pull back, I think, and could take some of his work was off his job to work on his house, things like that. And he expressed that he had seven to eight other jobs coming along.

And the feeling that I got was he was a very experienced, competent, seasoned contractor with some good experience and that was bolstered by some of the -- you know, the observations that he made during one of the walk-throughs -- the initial walk-throughs. And the reason I remember the 2.5 million number and the seven to eight job is because I had a habit in my old career of whenever I had a difficult conversation or something that I was advised to keep note of this. I write things down. And I happened to write this conversation down, which I had forgotten about. I found it about a month ago. It was about a page and a half and it specified the exact conversation, good points, the bad points. I have that in an exhibit here which I will call exhibit -- it's Exhibit J -- no, I'm sorry. I'm sorry. I believe it's Exhibit R. I'm sorry. It's not Exhibit R. I'm sorry.

MS. DIPIRO: I'm looking for it. Sorry, I --

THE WITNESS: I (indiscernible) --

MS. DIPIRO: -- gave him the wrong exhibit number.

THE WITNESS: But it was a kind of stream of consciousness thought process where I write things down and I do that so that I can revisit it at later times and said, this is what I said, this is what I thought, and I can fall back on that and sound like I knew what I was talking about when, in fact, maybe I had forgotten completely what we were talking about.

MS. DIPIRO: It's Exhibit Y.

THE WITNESS: Thank you.

MS. DIPIRO: My apologies.

THE WITNESS: Okay. Exhibit Y. So Exhibit Y is this document. Let's see. Okay. So it's --

THE COURT: Hold on. You get there; I'll get there, but --

THE WITNESS: Okay. It's longer than I thought. And it's followed by just a screenshot of the date that it was last altered, so that's what it was --

MS. DIPIRO: That's on page 6 of 6, the screenshot.

THE COURT: Yeah, I see that, so --

THE WITNESS: So that's --

THE COURT: All right. Look, you're going to want to offer this in evidence?

THE WITNESS: I would like to offer it in evidence.

THE COURT: All right. Let's try it this way. Any objection?

MR. REGAN: I do object. It's an out-of-court, un-cross-examined statement, Your Honor. I know it's a statement by a party, but I object to this going in as it is. No opportunity to cross-examine it before it was made.

(Pause)

THE COURT: All right. So it is hearsay. Under the federal definition, an 801(c) -- (d)(2) deals with parties -- statements of parties, but it's a statement of an opposing party that is offered against an opposing party. This is not a statement of an opposing party. It's a statement of a party who's offering it in support of his own position. And it certainly doesn't fit under (d)(1)(A) which is where a -- counsel has identified that would be a statement where the statement although previously made was made at a time when the declarant was subject to cross-examination, which you are not when you made this statement.

BY THE COURT:

Q. You just wrote this up and put it on this heading, right?

A. Oh, no. This -- no, I didn't write it. This was actually printed off the original document that I found.

Q. All right. So --

A. I --

Q. I don't think it matters, but what you did was -- you tell me. You're saying that contemporaneously with -- when did you make this document?

A. It was created on or about, I would say, 10/15 -- 20 of 2014 and it was last -- last updated on 10/27/14. So that was the last time I looked at it.

Q. Okay. Hold on. All right. So that's what this last page tells us --

A. Well, that's what -- you know --

Q. 6 of 6 tells us when it was last --

A. Last updated. Created, it was created sometime earlier, but last updated on 10/27/14.

Q. I see. Construction contract. Dealings with Ground. All right. And then you took it and you put it on -- what about that summary?

A. So I slapped the summary on it.

Q. Yeah.

A. I mean, I didn't want to -- so I put that on there to give it some color. I --

Q. I understand. And you then put it on in the form of an affidavit and signed it?

A. Yes. Right.

Q. You signed it just a few days ago.

A. That's correct. I found it a few days ago. I didn't know that I had this in my files.

Q. I understand.

A. But I can proceed without it being --

Q. Well, hold on.

A. Okay.

Q. Does -- I'm going to exclude it as hearsay. I'm not familiar with an exception. Hold on. The brain trust is thinking about this over there, too. We're not used to representing people in here, but ...

(Pause)

All right. So what we have here is the following. Federal Rule of Evidence 803 deals with exceptions to the hearsay rule and 803(5) deals with something called "recorded recollection." And it provides that a -- it's a -- on a matter where the witness once knew but now cannot recall enough to testify fully and accurately and has a record of that. And it was made or adopted by the witness so it was made here, he says, when the matter was fresh in his mind, within a few days, and it accurately reflects the witness's knowledge. So when you re-read this recently --

A. It is exactly like -- it is exactly what -- I mean, I -- I knew that we had this conversation and I had dim recollections of it and then I happened to cross this document --

Q. No, I just have one question. When you read this recently did you view it as an accurate statement as to what happened at the time?

A. Absolutely.

Q. You did?

A. Absolutely.

Q. All right. Then the following is the case. It is an exception then perhaps. I'll hear from counsel, but if it's admitted it can be read into evidence but isn't received as an exhibit. We'll just have you read it, although I have an alternative to that.

A. Okay.

Q. And it can be offered only by Mr. Anketell. If he wishes to put it in evidence, he can do that, but you would have an opportunity to read it. Any issue with my ruling on this --

MR. REGAN: Yes, Your Honor. I would --

THE COURT: -- proposed ruling?

MR. REGAN: I respectfully submit this is not a case of past recollection recorded because the screenshot that you have here doesn't give any of the content that the affidavit purports to represent. It simply says there's a line item with a certain title on it. As I understand the affidavit, this is not an account -- this is not a transcription of the notes. It's his formulation after reviewing whatever he reviewed. So we're not looking at a recorded memory. We're looking at an affidavit that was crafted after he says he looked into his computer and found something that has a certain title.

THE COURT: That's not what I thought he testified to at all.

MR. REGAN: I -- okay, I may be wrong on that. I --

my understanding of his testimony was, as I've suggested. If this --

THE COURT: Yeah --

MR. REGAN: If they're saying this is a verbatim --

THE COURT: Right. That's what I need to establish.

MR. REGAN: Okay. If that's his testimony then I understand your point about past recollection recorded. I still object, but you'll rule as you see fit.

THE COURT: All right.

BY THE COURT:

Q. So this document other than the heading and the title affidavit and the summary and where it starts with -- so what part of this starts the part that was written within a few days of your meeting and your signing the agreement?

A. Sure. Construction contract and dealings with Ground Up Construction and Damian Anketell. That's the part that's right below the summary.

Q. Yep.

A. And that's the name of the file. If you look at the name of the -- on the screenshot.

Q. And all of these words on that page, the following two pages -- three pages, almost four pages --

A. Five pages.

Q. All right. Up to the point where it says "Signed under the penalties" in fact, "The foregoing is true to the

best of my knowledge and belief," was that there?
A. It is all there.
Q. You wrote that several years ago -- a year ago you wrote that?
A. I did. I wrote all that up until it says, "The foregoing is true to the best of my knowledge and belief."
Q. Oh, all right. That's my question. So what you added recently was the from -- at the end from "The foregoing is true and signed under the pains and penalties of perjury"?
A. That's correct.
Q. Everything else was there verbatim. You didn't change it?
A. No.
Q. No change?
A. No.
THE COURT: All right. You want to cross-examine him on that? I'll let you do that. You want to ask him -- you know what? It's 4:00 o'clock, so we may let you do that tomorrow, but --
MR. REGAN: I would suggest that, Your Honor, yes.
THE COURT: I'll let you do that. I'll let you start.
So here's what the issue is, okay?
THE WITNESS: All right.
THE COURT: This is -- counsel quite rightly

identifies this as an exception to the hearsay rule that's called -- in our federal system is recollection recorded. We like -- in law school we like to call past recollection recorded as opposed to present recollection refreshed, which would mean you could read it and then put it away and tell me what you remember, if it refreshes your memory.

This is a little different from that. This would be you could actually read this to me. You might -- you know, it's a bench trial so I mean if we get to that maybe counsel will say rather than read it into the record he would allow you to just put that part in. You can't put in anything that you just added.

THE WITNESS: All right.

THE COURT: All right. But I still have to make an evidentiary predicate determination that you're eligible to use it the way that you want to use it. All right. That you want to read this to me or put it in and I'm going to give counsel a chance to ask you some questions about that first thing tomorrow morning or as soon as start tomorrow. Okay. But it's 4:00 o'clock, so that's where we are. And we'll resume at 11:00.

And how long do you think you're going to need to testify?

THE WITNESS: I think it will be very -- I mean, depending on Attorney Regan's --

THE COURT: Right. I'm just asking about you.

THE WITNESS: Fifteen minutes at the most.

THE COURT: Really? Okay.

THE WITNESS: I really think so.

THE COURT: All right. And he's probably got a little more than that with you, so -- and then -- okay. I think we'll --

THE WITNESS: No, I'll say half-hour just to be --

THE COURT: That's fine. We're probably going to be able to finish this tomorrow then. So I'll see you folks at 11:00 tomorrow.

Mary, do they -- what do we have here now tonight other -- we have these students.

You guys want to leave stuff here?

THE WITNESS: I'd love to.

MR. REGAN: I'll take my bag.

THE COURT: You want to leave stuff here?

THE WITNESS: I think so. Well --

MS. DIPIRO: That's all right. We'll take it.

THE COURT: You'll take it. Okay. If you want to leave it, I think you can. I'd just clear the desk, but --

MS. DIPIRO: Yeah, we'll take it.

THE COURT: Okay. All right. I'll see you at 11:00, all right?

MS. DIPIRO: Thank you.

THE COURT: Thank you all. Oh, well, there's nothing to tell you. There's no counsel to talk to. Okay. Thank you.

MS. DIPIRO: Thank you.

MR. REGAN: Your Honor, regular time, 9:30?

THE COURT: 11:00.

MR. REGAN: 11:00.

MS. DIPIRO: 11:00.

THE COURT: 11:00 tomorrow.

MR. REGAN: Thank you. I missed that. Thank you.

(End at 4:04 p.m.)

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I certify that the foregoing is a true and accurate transcript from the digitally sound-recorded record of the proceedings.

3/3/2016

RUTH ANN HAGER **Date**

Certified Transcriber
Federal C.E.R.T. **D-641
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